IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2100 OF 2005

IN

SUIT NO. 1902 OF 2005

Shemaroo Video P.ltd and ors. ......Plffs.
vs.
Movie Tee Vee Enterprises and ors. ......Defnds.

V. Tulzapurkar, Sr. Counsel with Soumya Srikrishna i/b. Anil Menon for the plffs.

Mr. B. Saraf with Kanta Shah i/b.A.G. Shah for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 6TH OCTOBER, 2005.

JUDGMENT :

1. The present notice of motion is taken out in the suit preferred by the plaintiff for a declaration that the defendant has no right, title and interest nor any licence to exploit or exhibit

in any manner films known as ‘Karz’ and ‘Hero’, nor any right to sell or distribute the aforesaid movies in CD and DVD formats. A further order is sought by way of permanent injunction restraining the defendants from infringing the copy rights of the plaintiff vested in them under the agreement dated 20.9.2002 inrespect of the aforesaid two movies. In nutshell the facts of the present case are briefly enumerated as under :

2. The plaintiff no.1 is a company inter-alia carrying on business in exploiting the films in the form of VCD’s (Video Compact Disc), DVD’s (Digitial Versatile Discs) and tapes and distribute and sell for exhibiting the same. The plaintiff no.2 is a company who is inter-alia carrying on business of a purchaser of Hindi movies and the plaintiff no.2 is the producer of these two movies which are the subject matter of the suit being ‘Hero’ and ‘Karz’. The defendant no.1 and 2 are also doing distribution and exploitation of the films.

3. It is the case of the plaintiff that some time

in or about 1980 a movie known as ‘Karz’ was produced and sometime in or about 1983 a movie known as ‘Hero’ was produced by the plaintiff no.2. On 4.5.1983 and 1.5.85 the plaintiff entered into two agreements with the defendant no.1 and conferred on the defendant no.1 exclusive rights on the aforesaid two films for distributing, exhibiting and exploitation of the aforesaid two movies in "16mm video and reduced sizes". The said rights are conferred on the defendant no.1 by the plaintiff no.2 for a period of 99 years. It is the case of the plaintiff that the rights which are conferred on the defendant no.1 by the plaintiff no.2 is only video rights and that is only in the video format i.e. VHS Video magnetic tape format (VHS). It is the case of the plaintiff that it is so because in the year 1983-1985 only video format was in use in India and no other format such as VCD and DVD were yet introduced in India and therefore by necessary implication the rights conferred under the said two agreement is only in the video format and not in the VCD and DVD format. It is the case of the plaintiffs that thus inspite of the rights

conferred on the defendant no.1 by plaintiff no.2 under the tow agreements dated 4.5.1983 and 1.5.1985 in so far as VCD and DVD rights are concerned the plaintiff no.2 continued to be the holder of the copy rights, in so far as the said two films are concerned. Thus according to the plaintiff no.2 he was entitled to enter into an agreement for exploitation of VCD and DVD rights inrespect of the two movies irrespective of subsisting agreement in favour of the plaintiff herein. It is his contention of the plaintiff no.2 that he assigned his rights earlier in a company known as 'M/s. Indus Mercantile Agencies' for a period of 10 years from the date of the delivery of the print under the agreement dated 5.9.78. According to the plaintiff these rights were assigned by way of an agreement including the right to copy or authorised copying of the said films on VCD's and DVD's. The said right by way of assignment was granted for a period of 10 years from the delivery of the said film. It is the case of the plaintiff that the said assignment in favour of M/s Indus Mercantile Agencies came to an end on

30.11.87 and subsequently the plaintiff no.2 conferred the right on the plaintiff no.1. According to the plaintiffs an agreement was entered into by the plaintiff no.2 in favour of the plaintiff no.1 conferring the rights in the said films on 20.9.2002. In the said agreement dated 20.9.2002 the VCD and DVD rights inrespect of the said films are conferred on the plaintiff no.1 and the same is for a period of 1.10.2002 to 20.3.2007 i.e. for a period of 5 years and 6 months. It is the case of the plaintiff no.1 that pursuant to the said agreement he has taken delivery of the said films from the plaintiff no.2 and thus he is fully entitled to exploit the suit films by way of VCD and DVD throughout the territories of India, Nepal, Bhutan and other territories as mentioned in the agreement. It is the case of the plaintiff no. 2 that sometime in or about October 2002 they came across that a distributor known as M/s. Gold Video was distributing and selling the movies in VCD format. It is thus the case of the plaintiff that they realised that the defendant is also exploiting the said movies in the of VCD and DVD formats. It

is the case of the plaintiff that the said M/s. Gold Video thereafter stopped distribution of the said VCD's. The defendant no.1 thereafter by their letter dated 28.12.2004 has called upon them to stop from distribution of the said movies in the VCD or DVD formats. By the said letter the defendant no.1 has claimed that they are the owners of the video copy rights of films in all the territories inrespect of the said films for a period of 99 years and they have called upon the plaintiffs to forthwith stop the sale of the video films and hand over to the defendant no.1 all the plates and other equipments used or meant for manufacture of Video C.D.'s of the said two suit films. By letter dated 8.1.2005 the plaintiff denied the said contention. However the defendant no.1 addressed a further letter on 17.1.2005 and reiterated their rights. Correspondence were exchanged between the parties and ultimately the plaintiffs have filed the present suit inter-alia claiming the aforesaid right in their favour and sought an injunction that the defendant should not be permitted to continue to exploit the films in

VCD’s and DVD’s.

4. Though the motion was placed for ad-interim injunctions before me however since the parties have already filed their affidavits both the parties agreed that the motion can be heard finally at this stage itself and dispose off. Accordingly i have heard the parties at length and disposed off the present motion finally.

5. Mr. Tulzapurkar learned counsel appearing for the plaintiff have inter-alia contended that under the two agreements dated 4.5.83 and 1.8.1985 what was conferred on the defendant no.1 was merely a limited right in a video film of the said films. At that time according to him the video films were available in what is known as VHS. He has drawn my attention to the said agreement which is entered into between the plaintiff no.2 and the defendant no.1 inrespect of the movie known as ‘Karz’ on 4.5.1983 where under Clause 1 the rights are conferred on the defendant no.1 herein. The said clause 7 and 9 of the said agreement were brought

to my attention. It was contended that inrespect of the second agreement dated 1.5.85 for the movie 'Hero' also the terms and conditions of the agreement are identical. The said Clause 1, 6, 7 and 9 reads as under :

> "1. For the consideration hereinabove mentioned the lessors do hereby assign, grant and transfer to the lessees the sole and exclusive rights of the said picture for distribution, exhibition and exploitation of the said picture in 16mm, video and reduced sizes for a period of 99 years for the territories referred to above.
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> 6. The lessees alone are fully entitled to distribute, exhibit and exploit the said picture in 16 mm video and reduced sizes either by themselves or by appointing sub-distributors and/or agents and shall be entitled to transfer their, right tiles and interests in par and/or full lease out, sell or deal with any party or parties, person or persons, government or semi-government departments etc.
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> 7. The lessors do hereby declare that the lesser are/truly well and sufficiently entitled to the said rights hereby assigned granted and transferred to the lessees and that the lessors have not encumbered or alienated the same in any manner whatsoever so as to

prevent the lessors from entering into agreement for exclusive distribution, exhibition and exploitation of the picture as herein above provided. The lessors hereby covenant with the lesses's that the lessors will not hereinafter encumber or alienate the rights inrespect of the said hereby assigned, granted and transferred for the territories hereinabove mentioned.

9. The lessors further agree and undertake nor to supply any 16mm and reduce size prints in colour and or Black and White or any part/parts thereof, of the said picture to any party or persons and or exploit the same non-commercially in any gauge in the territories assigned to the lessees and as specified hereinabove and the lessees will have the right to stop such illegal non-commercial exploitation in any gauge."

6. By relying upon the aforesaid clauses the learned counsel for the plaintiff has contended that what was conferred under the aforesaid two agreements by the plaintiff no.2 to the defendant was only 16mm video and reduced sizes" exploitation rights in the said pictures. It was contended that

words ‘video and reduced sizes’ does not include VCD’s and DVD’s. However Clause 9 of the said agreement goes a step further and confers also the right on the defendant to commercially exploit the film in any gauge. Learned counsel has contended that on the reading of the Clauses 1, 6, 7 and 9 together it is clear that what was conferred on the defendant no.1 was exploitation of video rights and the movies on 16mm reduced sizes. It has been contended that when the words ‘video rights and reduced sizes" is provided in the agreement the same does not include the VCD and DVD rights. It has been contended by the learned counsel for the plaintiff that the VCD and DVD as a technology was unknown to India in 1983-85 when the aforesaid lease agreements were entered into between the plaintiff and the defendant herein. He has further contended that once the said technology was not available in India at the relevant time then the interpretation of the agreements has to be restricted in the light of the said technology available at that time because it was not in contemplation of the parties while entering into an

agreement that the VCD and DVD technology will arrive in India subsequently and that the party will be entitled to exploit the said movies in the VCD and DVD format also. It is thus contended that the rights which was conferred under the said two agreements to the defendants are limited rights in the exploitation of the film only in the video format i.e. VHS films and is not extended to the exploitation of the film under the format of DVD and or VCD. It has been further contended that the interpretation of the agreement has to be on the basis of harmonious construction of all the clauses together and it has been contended that on reading Clauses 1, 6, 7, and 9 together it is very clear that VCD and DVD rights were only conferred on the defendant and therefore the defendant is not entitled to exploit the same and the plaintiff who has been conferred the said VCD and DVD rights by an agreement of 20.9.2002 they are entitled to use the said films for VCD and DVD rights.

7. In support of the aforesaid contention the learned counsel has drawn my attention to two

judgments of the Single judge of this court in the case of **M/s. Video Master and Anr. vs. M/s. Nishi Productions and Ors reported in 1998(3) Bom.C.R. 782,** particularly para-8 of the said judgment. He has also brought to my attention the judgment of the learned single judge of the Madras High Court **Raj Video Vision vs. K. Mohan Krishnan and Anr. reported in 1999 PTC (19) 110** and has brought to my attention para-10 of the said judgment which reads as under :

> "1O. One of the arguments which can be made herein is that the original assignors viz. the produces, have not kept the video rights with them and therefore, it presumed that the said right was not reserved by the producers, The obvious reason is that in the year 1961 neither the assignors nor the assignees could have dreamt of telecasting or video rights for exploitation or exhibition or distribution or printing transferring master cassettes, etc. However, the conclusion which can be arrived at is that when the producers themselves were not aware of their future rights accrued due to scientific advancements, it cannot be said they had already transferred the rights not in

> existence by way of assignments. The assignments cannot be made on rights not ion existence and therefore it can be safely decided that the video rights of the film were not given to the assignees M/s. Azam and Company and the assignee in turn an assignors could not have assigned the video rights to the 2nd defendant herein.

8. On the other hand the learned counsel for the defendant has contended that the argument advanced by the plaintiff is totally devoid of any merits. It has been contended that what was conferred on the defendant by the plaintiff was distribution, exploitation and exhibition of the picture in the format of 16mm video and reduced sizes for a period of 99 years. and the reduced sizes can be in any gauge. It has been contended that when you confer video rights and in reduced sizes it will include a further advanced version of the video cassettes in the format of VCD’s and DVD’s because it is nothing but a reduced size of a video tapes (VHS). It has been further contended that both the DVD’s and VCD’s and VHS tapes can be exploited via the medium of video rights. The right

conferred under the agreement is not only to exhibit the film through the VHS tapes via the video media but it can be exploited in any form of the video tapes as long as it can be exploited via the media of video. It has been contended that the word video exploitation include the exploitation by the VCD and DVD tapes and thus the rights conferred under the two agreements is comprehensive rights including VCD and DVD rights inrespect of the said films. He has also drawn my attention to the agreement dated 20.9.2002 entered into between the plaintiff no.2 and the plaintiff no.1 and has brought to my attention that the said agreement is not only inrespect of the VCD and DVD but is also inrespect of the VHS. Thus deliberately in breach of the defendants rights under the said two agreements, the plaintiff no.2 has conferred video rights on the plaintiff no.1 and permitted him to exploit the said video rights through all the tapes known as VHS, VCD and DVD. Thus it has been contended that the argument advanced by the learned counsel is infact contrary to the facts on record because admittedly though

the plaintiff has argued that only VHS rights are given to the defendant no.1 and 2 still the agreement dated 20.9.2002 indicates that the said rights are also conferred again by the plaintiff no.2 in breach of the said lease agreement to the plaintiff no.1. Learned counsel has further argued that when rights are given in 16mm size film and of any reduced gauge then the video rights can be included in any form of tapes and there is no restriction under the lease agreements that the said video rights can be utilised only in the format of VHS tapes. It has been further contended that the word 'reduced sizes' infact includes the VCD and DVD because VCD and DVD is nothing but a reduced size of the video tapes. Learned counsel for the defendant has relied upon a judgment of this court in the case of **Maganlal Savani and anr vs. Rupam Pictures (P) Ltd and ors reported in 2000(4) Bom.C.R. 400** particularly para-6 thereof which reads as under :

> 6 What is assigned to the first plaintiff is the exploitation, distribution and exhibition commercially or otherwise of the picture. In this context we have to give a wider meaning of

the term ‘exploitation’ Exploitation of a film takes in all the scientifically and technological device that may even in future also and the plaintiff could make use of those inventions given such an interpretation of the word "exploitation" the objection raised by the first plaintiff in conducting satellite telecasting of the picture "Chupke chupke" will per se violative of the provisions of the agreement. The similar view has been taken by this court in the context of interpreting similar contract in Notice of Motion No. 8663/99 dated 17th August 1999. I need not go into the details of that order because the matter has been taken in appeal before the Division Bench of this court and the Division bench of this court by order dated 10.1.2000 in Appeal No. 1246/99 upheld the order of the learned single Judge and held that the exploitation is taking of the kind of exploit, including the internet, satellite telecast. It is profitable to quote the observation of the Division Bench.

> "We find no infirmity in the prima-facie opinion expressed by the learned single judge that the phrase all other rights attached to such exploitation cannot be read to mean that the other rights referred only to television rights and the Clause shows that the plaintiff is the sole, exclusive and perpetual copyright holder for exploitation of the films in question.

In view of this, I find that the agreement executed between the first plaintiff and the first defendant will take in satellite telecast of the said film also."

9. He has also relied upon an unreported judgment in the case of Maganlal SAvani vs. M/s. Khosla Enterprises and Ors decided by the learned single judge of this court in Notice of Motion No. 863 of 1989 in suit No. 925 of 1999 decided on 17.8.1999 wherein in a similar controversy this court has held as under :

> "7 In my view, the most natural meaning to be given to the aforesaid clause is that the plaintiff has been given perpetual copyrights of exploitation, distribution and exhibition of films. These rights include the rights of television and all other rights attached to such exploitation. The phrase all other rights attached to such exploitation cannot be read to mean that the other rights referred only to television rights. The clause clearly shows that the plaintiff is the sole exclusive and perpetual copyright holder for exploitation of the films. The size of of the pictures viz. 35mm as well as any reduced sizes or sizes cannot be read to mean that all other rights where the film is exhibited through the medium of video cassettes and DVD has been excluded. Ultimately what was assigned to the plaintiff was the right to exploit and exhibit the films through different sizes of the film and by the medium of television. Video cassettes, VCD and DVD are only improved versions of exhibiting the film. What was earlier done by the

> spool containing the film is now being done by video cassettes and DVDs. Satellite broadcasting can also not be said to be excluded from the television rights which had been granted to the plaintiff. By using the satellite channels the plaintiff is still exhibiting the films on television. In fact the clause clearly indicates that all rights for exploiting the film had been assigned to the plaintiff."

10. I have considered the rival submissions and I am of the opinion that the arguments advanced by the learned counsel for the plaintiff is devoid of any merits. I am of the opinion that on a conjoin reading of the Clauses-6,7 and 9 of both the agreements together it is very clear that what was is conferred in a lease of 99 years is the rights for films in 16mm sizes video exploitation and in similar sizes of any gauge. The rights are not conferred only for exploitation of the movies via the VHS tapes as contended by the learned counsel for the plaintiff. Thus if the rights are conferred by the agreement is inrespect of the exploitation of the film via the

mode or channel of video then the method or manner in which the said exploitation can be made cannot be restricted to the existing methods at a time when the said agreement was executed. If there is any advanced technology introduced then in that event the right in the nature of exploitation of the said videos by way of advanced technology cannot be restricted or precluded if essentially the right to exploit the said movies is vested in a party by a video media. In this lease agreement video rights are not restricted only in respect of the VHS tapes. The argument that it was not in contemplation of the parties that there can be a VCD’s and DVDS form of tapes for the purpose exhibition of a film on a video is merely required to be rejected for the simple reason that the words "reduced sizes" introduced in the agreement indicates that it was in contemplation of the parties while executing the agreement that video exploitation can be in any reduced sizes in the films and tapes. Apart from the aforesaid I am of the opinion that the second judgment cited by the learned counsel for the defendant supports my

reasoning that the word exploitation of film takes in its sweep all formats of technology which may be invented in future also. The judgment of Nijar, J has in terms held that video cassettes are also can be in improved version of exploiting the films and when there is a right given of exploitation of the films in 35 mm as well as reduced sizes then in that event the party is entitled to exploit the movies of any films in VCD and DVDS. I am of the further opinion that if an agreement between the parties does not restrict their rights of exploitation of films by existing technology then it is not open to the court to introduce such restriction by a process of interpretation of the said agreement.

11. The judgment cited by the learned counsel for the plaintiff of the learned single judge of this court Sakhare, J in my opinion does not apply to the facts of the present case. The issue before the court was whether the television right and satellite broadcast right is similar or different i.e. cable rights or T.V. rights are

same or different. The Learned Judge has come to the conclusion that T.V. distribution of films being different the cable rights and telecast right differ from original terrestrial TV rights and thus the learned single judge held that the said satellite rights are not included in the words T.V. rights In so far the judgment of the Madras High Court is concerned I do not agree with the view which has been advanced by the learned judge. In any event I am of the view that the judgment of the Madras High Court has no application to the facts of the case because there the case was what was conferred on the parties was T.V. rights for exploitation of the films which is totally different from video rights. It was not the case that the T.V. rights are exploited by any other advanced method. It was a case of totally different nature of right. However in the light of the judgment of this court referred to above I am of the opinion that the video rights covers in itself exploitation of the film through the media of video, VHS tapes, VCD’s or DVD’s or any other advanced version of tape but the

exploitation of the film must be through the media of video exploitation only and no other media and method of exploitation. T.V. rights and video rights are totally different categories and not improved version of the rights. In my view the judgment of the Madras High Court has no application to the facts of the present case. I am of the opinion that on true and correct interpretation of the agreement before me the defendants.1 and 2 are entitled to exploit the video rights of both the films under the aforesaid two agreements including the exploitation by the VCD's and DVD's cassettes apart from VHS cassettes. I am also of the further opinion that the plaintiff no.2 is advancing false and frivolous arguments because though in the course of the argument it is contended that VHS rights are conferred on the defendants dated 20.9.2002 agreement indicates that even the VHS rights are purported to have conferred by the plaintiff no.1 by the plaintiff no.2 directly and contrary to the two lease agreements which according to the plaintiff confers the VHS video rights on the

defendant no.1 and 2. I am thus of the opinion that a person whose conduct is of such a nature that who commits a breach of the agreement and enters into another agreement and thereafter with a view to protect atleast part of its rights in the agreement enters into such a frivolous kind of litigation as in the present case is not entitled to any relief much less the equitable relief of the injunction in the present case. Therefore also I reject the contention of alleged claim of breach of copy rights as pleaded by the plaintiff. I am also of the prima-facie opinion that the plaintiff having failed to make out any prima-facie case and in view of the fact that defendant no.1 and 2 are exploiting their copy rights within the rights as conferred under the said two agreement the plaintiff is not entitled to any injunction on the alleged ground of breach of copy rights. I therefore dismiss the motion. The plaintiffs to pay costs of the motion quantified at Rs.10,000/-.

sd/-

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